

**ORDINANCE NO. \_\_\_\_\_**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 98 ENTITLED "ZONING", ARTICLE VII. CONCURRENCY MANAGEMENT SYSTEM, DIVISION 1. GENERALLY, AND IN PARTICULAR, BY REVISING HIALEAH CODE § 98-2392 ENTITLED "DEFINITIONS", TO PROVIDE ADDITIONAL TERMS AND DEFINITIONS; AND AMENDING ARTICLE VII. CONCURRENCY MANAGEMENT SYSTEM, BY ADDING A NEW DIVISION ENTITLED "PROPORTIONATE FAIR-SHARE MITIGATION FOR TRANSPORTATION", TO PROVIDE FOR APPLICABILITY, GENERAL REQUIREMENTS, APPLICATION PROCESS, THE DETERMINATION OF PROPORTIONATE FAIR-SHARE OBLIGATION, IMPACT FEE CREDIT FOR PROPORTIONATE FAIR-SHARE MITIGATION, PROPORTIONATE FAIR-SHARE AGREEMENTS, AND APPROPRIATION OF FAIR-SHARE REVENUES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Planning and Zoning Board at its meeting of March 14, 2007 recommended approval of this ordinance; and

**WHEREAS**, the general purpose and intent of this ordinance is to provide proper zoning regulations in the best interest of the health, safety, welfare and aesthetics of the community and the proper administration of its government; and

**WHEREAS**, the 2005 amendments to Florida's growth management legislation directed local governments to allow for "proportionate share" contributions from developers towards transportation concurrency requirements under circumstances where a road segment or segments are operating below the adopted level-of-service standard; and

**WHEREAS**, this ordinance provides for a proportionate fair-share program that gives developers an option to proceed with development within the city geographic limits, under certain circumstances, notwithstanding the failure of transportation concurrency, by contributing their share of the cost of improving the impacted transportation facility.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Chapter 98 entitled "Zoning", Article VII. Concurrency Management System,

Division 1. Generally, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended to read, by revising Hialeah Code § 98-2392 entitled "Definitions," as follows:

**Chapter 98**

**ZONING**

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**ARTICLE VII. CONCURRENCY  
MANAGEMENT SYSTEM**

**DIVISION 1. GENERALLY**

**Sec. 98-2392. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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*Final development order* means any permit authorizing construction of a new building, the expansion of floor area, the increase in the number of dwelling units contained in an existing building, modifications to an existing building or site to accommodate a change in use for which a new certificate of use and occupancy will be required, or any certificate of use and occupancy authorizing a change in the use or authorizing the initial use of a parcel or structure or portion thereof, where there is no other final development order in effect, reviewed and approved in accordance with this article, authorizing such use. A final development order for transportation shall be satisfied as provided in section 98-2464 herein or through proportionate fair share mitigation for transportation.

*Financial feasibility* means that sufficient revenues are currently available or will be available from committed funding sources for the first three years, or will be available from committed or planned funding sources for the fourth and fifth year, of a five-year capital improvement schedule for financing capital improvements, such as ad valorem taxes,

bonds, state and federal funds, tax revenues, impact fees and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the five-year schedule of capital improvements.

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*Levels of service* mean the extent or degree of capacity per unit of demand for a public facility.

*Proportionate fair-share mitigation for transportation.* A developer may choose to satisfy all concurrency requirements by contributing or paying its calculated fair share if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the five-year schedule of capital improvements in the capital improvement element of the city comprehensive plan or if payments to such facilities or segments are reflected in the five-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element; or programmed for construction in the five-year capital facility plan or work program of the agency having responsibility for the transportation improvement.

*Public facilities and services* means major capital improvements and services for which level of service standards have been adopted in the city comprehensive plan including transportation, sanitary sewer, solid waste, drainage, potable water, and parks and recreation.

*Strategic Intermodal System (SIS)* means a statewide network of high-priority transportation facilities, including the state's largest and most significant commercial service airport, spaceport, deepwater seaports, freight rail terminals, passenger rail terminals and intercity bus terminals, rail corridors, waterways and highways.

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**Section 2:** Chapter 98 entitled "Zoning", Article VII. Concurrency Management System, of

the Code of Ordinances of the City of Hialeah, Florida is hereby amended to read, by adding a new

division entitled "Division 4. Proportionate Fair Share Mitigation for Transportation", as follows:

**Chapter 98**

**ZONING**

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**ARTICLE VII. CONCURRENCY MANAGEMENT SYSTEM**

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**DIVISION 4. PROPORTIONATE FAIR SHARE MITIGATION  
FOR TRANSPORTATION**

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**Sec. 98- . Applicability.**

The proportionate fair-share program shall apply to all developments within the city that have been notified of a lack of capacity to satisfy transportation concurrency on one or more transportation facilities according to the concurrency management program, including transportation facilities maintained by the Florida Department of Transportation (FDOT) or another jurisdiction that are relied upon for concurrency determinations, pursuant to the general requirements. The proportionate fair-share program does not apply to Developments of Regional Impact (DRIs) using proportionate fair-share under section 163.3180(12), F.S., or to developments exempted from concurrency.

**Sec. 98- . General requirements.**

(a) An applicant whose project meets the applicability threshold may choose to satisfy transportation concurrency requirements by making a proportionate fair-share contribution, pursuant to the following requirements:

- (1) The proposed development is consistent with the city comprehensive plan and applicable land development regulations;  
and

(2) The five-year schedule of capital improvements provided in the city capital improvements element (CIE) includes one or more transportation improvements that, upon completion, will satisfy the requirements of the city concurrency management program. The provisions of section (b) below may apply if a project or projects needed to satisfy concurrency are not presently contained within the capital improvements element.

(b) The city may choose to allow an applicant to satisfy transportation concurrency for a deficient segment or segments, through the proportionate fair-share program, by the developer contributing to an improvement that, upon completion, will create additional capacity on the deficient segment or segments sufficient to accommodate the additional traffic generated by the applicant's proposed development even if the improvement project for the deficient segment or segments is not contained in the five-year schedule of capital improvements in the CIE where:

(1) The city council holds an advertised public hearing to consider the proportionate share agreement and corresponding future changes to the five-year CIE; and

(2) The city council approves a proportionate fair-share agreement, by resolution, directing the administration to file a city-initiated amendment adding the improvement to the five-year schedule of capital improvements in the CIE, no later than the next regularly scheduled update or revision of the CIE. To qualify for consideration under this section, the proposed improvement must be reviewed by the city council, and determined to be financially feasible, consistent with the city comprehensive plan, and in compliance with the provisions of this division.

(c) Any improvement project proposed to meet a developer's fair-share obligation must meet city design standards for locally maintained roadways, and the state design standards for the state highway system.

**Sec. 98- . Application process.**

(a) Upon the notification of a lack of capacity to satisfy transportation concurrency, an applicant may choose to satisfy transportation

concurrency through the proportionate fair-share program pursuant to the general requirements provided herein.

(b) Prior to submitting an application for a proportionate fair-share agreement, the applicant shall attend a pre-application meeting with the streets department and the planning division to discuss eligibility, application submittal requirements, potential mitigation options and related issues. If the impacted facility is on the Strategic Intermodal System (SIS), then FDOT will be notified and invited to participate in the pre-application meeting.

(c) Eligible applicants shall submit an application to the planning division that includes an application fee, as established by resolution or administrative order, and the following:

- (1) Name, address, and phone number of owner, developer and agent;
- (2) Property location, including parcel identification numbers;
- (3) Legal description and survey of property;
- (4) Project description, including type, intensity, and amount of development;
- (5) Phasing schedule, if applicable;
- (6) Description of requested proportionate fair-share mitigation method;
- (7) Copy of concurrency application; and
- (8) Location map depicting the site and affected road network.

(d) Within ten business days, the streets department and planning division shall review the application and certify that the application is sufficient and complete. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the proportionate fair-share program, then the applicant shall be notified in writing of the reasons for such deficiencies within ten business days of submittal of the application. If such deficiencies are not remedied by

the applicant within 30 days of receipt of the written notification, then the application shall be deemed abandoned.

(e) Pursuant to section 163.3180(16)(e), F. S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrency of FDOT. If a SIS facility is proposed for proportionate share mitigation, the applicant shall submit evidence of an agreement between the applicant and FDOT for inclusion in the proportionate fair-share agreement.

(f) Once an application is deemed sufficient, complete, and eligible, a proposed proportionate fair-share obligation and binding agreement will be prepared by the applicant with city assistance and delivered to the streets department and planning division for review, including a copy to FDOT for any proposed proportionate fair-share mitigation on SIS facilities, no later than 60 days from the date at which the application was determined to be sufficient and no fewer than 14 days prior to the city council meeting when the agreement will be considered.

(g) The office of the city clerk shall notify the applicant of the date, time, and location of city council meeting at which the agreement will be considered for final action. No proportionate fair-share agreement will be effective until approved by the city, by resolution.

**Sec. 98- . Determination of proportionate fair-share obligation.**

(a) Proportionate fair-share mitigation for concurrency impacts may include, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided for in section 163.3180(16)(c), F. S.

(b) A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ based on the form of mitigation as provided for in section 163.3180 (16)(c), F. S.

(c) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in section 163.3180(12), F. S., as follows:

The amount of the proportionate-share contribution shall be calculated based upon the cumulative number of trips from the proposed

development expected to reach roadways during the peak hour from the complete build-out of a stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service. This methodology is expressed by the following formula:

$$\text{Proportionate Fair Share} = \Sigma [(\text{Development Trips}_i) \div (\text{SV Increase}_i)] \times \text{Cost}_i]$$

(Note: In the context of the formula, the term "cumulative" does not include a previously approved stage or phase of a development.)

**Where:**

$\Sigma =$  Sum of all deficient links proposed for proportionate fair-share mitigation for a project.

Development Trips<sub>i</sub> = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the concurrency management system;

SV Increase<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment "i";

Cost<sub>i</sub> = Adjusted cost of the improvement to segment "i". Cost shall consist of all improvements and associated costs, including design, right-of-way acquisition, planning, engineering, inspection, and physical development costs, directly associated with construction at the anticipated cost in the year that construction will occur.

(d) For purposes of determining proportionate fair-share obligations, the city shall determine improvement costs based upon the actual and/or anticipated costs of the improvement in the year that construction will occur.

(e) If the city accepts an improvement project proposed by the applicant, then the value of the improvement shall be based on streets

department cost estimate approved by the director of streets, or other method approved by the mayor.

(f) If the city accepts a right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at 120% of the most recent assessed value by the county property appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the city at no expense to the city. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the city at no expense to the city. If the estimated value of the right-of-way dedication proposed by the applicant, based on a city-approved appraisal, is less than the city estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to the purchase of acquisitions of any real estate intended to be used for proportionate fair-share, public or private partners should contact FDOT for essential information about compliance with federal law and regulations.

**Sec. 98- . Impact fee credit for proportionate fair-share mitigation.**

(a) Where mitigation is occurring on county roads, proportionate fair-share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the county's impact fee ordinance.

(b) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced according to the proportionate fair-share agreement as they become due pursuant to the county's impact fee ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the county pursuant to the requirements of the county impact fee ordinance.

(c) Major projects not included within the county's impact fee ordinance or created herein that can demonstrate a significant benefit to

the impacted transportation system may be eligible, at the county's discretion, for impact fee credits.

(d) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the county's impact fee ordinance.

**Sec. 98- . Proportionate fair-share agreements.**

(a) The city has the authority by resolution to enter into a proportionate fair-share agreement.

(b) Upon executing a proportionate fair-share agreement, in a form acceptable by the city, and satisfying other concurrency requirements, an applicant shall receive concurrency approval. Should the applicant fail to apply for a development order within 90 days of receiving concurrency approval by the city, the project's concurrency vesting shall expire, and the applicant shall be required to re-apply.

(c) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final plat or building permit whichever occurs first. If the payment is submitted more than six months from the date of execution of the proportionate fair-share agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment. Once a proportionate share payment for a project is made and other impact fees for the project are paid, no refunds shall be given unless otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements.

(d) All developer improvements authorized under the fair-share program must be completed as established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements.

(e) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed

prior to issuance of the final development order or recording of the final plat.

(f) Any requested change to a development project subsequent to issuance of a development order shall be subject to additional proportionate fair-share contributions to the extent the change would increase project costs or generate additional traffic that would require mitigation.

(g) Applicants should submit a letter to withdraw from a proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the city are nonrefundable.

(h) The city may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

**Sec. 98- . Appropriation of fair-share revenues.**

(a) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the city CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the city's discretion, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

(b) In the event a scheduled facility improvement is removed from the CIE, then the proportionate fair share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development project on the congested roadway or roadways for which the original proportionate fair share contribution was made.

**Sec. 98- . Proportionate fair-share program for TCMAs.**

Within transportation concurrency management areas (TCMAs) designated by the city, the city hereby establishes a proportionate fair-

share assessment, based on the expected costs and transportation benefits of all the programmed improvements in the area, and based on the expected trip generation of the proposed development.

**Section 3:     Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4:     Penalties.**

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 5:     Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

**Section 6:     Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 7:     Effective Date.**

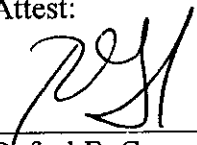
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 10th day of April, 2007.

  
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Esteban Bovo  
Council President

Attest:

Approved on this 11 day of April, 2007.

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Gonzalez, Hernandez, Miel and Yedra voting "Yes".